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No. 02-1393

In the Supreme Court of the United States

GORDON B. SAUCERMAN, ET AL., PETITIONERS

v.

GALE NORTON, SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

The Secretary of the Interior has issued an order confirming that the United States holds title to certain shoreline lands, previously designated as part of the Parker Dam Project, in trust for the Chemehuevi Indian Tribe. The question presented is:

Whether the principle of sovereign immunity bars a suit, not authorized by the Quiet Title Act, 28 U.S.C. 2409a, seeking a declaration that the shoreline lands are not owned by the United States in trust for the Tribe.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-5a) is reproduced at 51 Fed. Appx. 241. The opinion of the district court (Pet. App. 6a-17a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 19, 2002. On February 13, 2003, Justice O'Connor extended the time within which to file a petition for a writ of certiorari to and including March 19, 2003, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioners brought this suit seeking to establish that the United States does not hold title, on behalf of the Chemehuevi Indian Tribe, to certain shoreline lands adjacent to Lake Havasu that petitioners were, at one time, entitled to occupy under now-expired federal permits. The United States District Court for the District of Arizona dismissed the action on sovereign immunity grounds, because the Quiet Title Act (QTA), 28 U.S.C. 2409a, does not authorize suits disputing title to "trust or restricted Indian lands." 28 U.S.C. 2409a(a). See Pet. App. 6a-17a. The court of appeals affirmed. *Id.* at 1a-5a.

1. The Chemehuevi Indian Tribe is a federally-recognized Indian Tribe, organized under Section 16 of the Indian Reorganization Act, 25 U.S.C. 476. *Chemehuevi Indian Tribe* v. *California State Bd. of Equalization*, 757 F.2d 1047, 1050 n.1 (9th Cir.), rev'd on other grounds, 474 U.S. 9 (1985). "Since time immemorial, the Chemehuevi Indian Tribe has resided in the Chemehuevi Valley desert along the Colorado River, in the area that is now part of the Chemehuevi Indian Reservation." 757 F.2d at 1050. In *Arizona* v. *California*, 373 U.S. 546 (1963), this Court ruled that the United States had reserved water for the Chemehuevi and other Indian reservations along the Colorado River at the time of their creation, *id.* at 595-601 & n.97, and the Court rejected the argument that the reservations were invalid because they were originally established by Executive Order, *id.* at 598.

The controversy in this case had its genesis in the Parker Dam Project Act of July 8, 1940, ch. 552, 54 Stat. 744, which authorized the Secretary of the Interior to designate for government use those lands within the

Chemehuevi Indian Reservation that were needed for construction of the Parker Dam Project. On November 25, 1941, the Secretary designated lands within the Reservation below the 465-foot contour line for that purpose. Pet. App. 7a. After construction of the dam, the lake level rose only to the 450-foot contour line, leaving a strip of shoreline above the lake level. *Ibid.* As a result, the Chemehuevi Tribe not only lost its valuable bottom lands beneath Lake Havasu, but also lost valuable riparian lands adjacent to the newly created lake. To address that inequity, the Secretary issued an order on November 1, 1974, correcting the 1941 designation, and confirming that "[t]he Chemehuevi Tribe has full equitable title to all those lands within the Chemehuevi Indian Reservation designated to be taken by Secretary Ickes in 1941" that lay between the 450-foot and the 465-foot contour. See Tribal Respondents' Supp. C.A. E.R. (TRSER) Tab 24, at 11.

Between 1941 and 1974, the Department of the Interior had issued a number of site use permits and concessions to non-Indians, pursuant to which petitioners or their predecessors had placed various cabins and other structures on the shoreline area. In 1974, homeowners associations representing non-Indian permit holders on the shoreline filed suit to challenge the validity of the secretarial order. *Havasu Landing, Inc.* v. *Morton*, No. 74-3565 (C.D. Cal.). The parties in *Havasu Landing* entered into a settlement agreement in 1976, under which the permit holders were allowed to renew their permits, in some cases until 1990, and in return released the Tribe and the United States from all claims of any kind relating to the 1974 order restoring the land to the Reservation. TRSER Tab 33, at 95-106.

2. Petitioners remained in the cabins until 1990, but refused thereafter to enter into new leases with the Tribe or acknowledge the Tribe's equitable title to the shoreline area. Notwithstanding the 1976 settlement agreement, former permittees filed an action in 1992 seeking a declaration that the shoreline area was not part of the Reservation but was instead under the jurisdiction of the Bureau of Reclamation. *Havasu Landing Homeowners Ass'n* v. *Lujan*, No. 92-6184 (C.D. Cal. Oct. 15, 1992). The district court concluded in that action that the former permittees' claims were barred because they fell within the Indian lands exception of the QTA, 28 U.S.C. 2409a(a), and the court of appeals affirmed that decision. *Havasu Landing Homeowners Ass'n* v. *Babbitt*, No. 94-55842, 1996 WL 21598, at *1 (9th Cir. Jan 22, 1996) (74 F.3d 1245 (Table)).

The court of appeals found that the the QTA's Indian lands exception barred the former permittees' attempt to seek a judicial determination "of the *capacity* in which the United States holds title to the property." 1996 WL 21598, at *1. The court held that the government need only show a "colorable claim" that the land is held in trust for an Indian Tribe to invoke the exception, and it found that the government had made such a showing. *Id.* at *2. The court also held that the QTA bar could not be avoided by pleading the suit as an "officer's suit" or a suit under the Administrative Procedure Act (APA). *Id.* at *3 (citing *Block* v. *North Dakota*, 461 U.S. 273, 284-286 (1983)). The former permittees nevertheless continued to refuse to consummate leases with the Tribe.[1]

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[1] The United States brought ejectment actions against some residents, not including petitioners, who had declined to enter into new leases with the Tribe. *United States* v. *Jorgensen*, 92-3809

3. On November 17, 2000, the Chemehuevi Tribe filed a complaint against a number of former permittees, including petitioners, in the Chemehuevi Tribal Court. Pet. App. 7a. The complaint alleged that those individuals were trespassing on reservation land in violation of tribal and federal law, and it requested ejectment and damages. TRSER Tab 33, at 29 *et seq.* Petitioners failed to appear in tribal court, and default judgments were entered against them. Pet. App. 8a.

4. On January 31, 2001, petitioners filed this action for declaratory and injunctive relief. Pet. App. 8a. The complaint named as defendants the Secretary of the Interior and other Department officials, as well as the Chemehuevi Tribal Council and tribal officials. The complaint acknowledged that petitioners had signed a release in 1976 as part of the settlement in *Havasu Landing Inc.* v. *Morton* (Compl. para. 40), but alleged that the release was "void because it violates public policy" (*id.* para. 42). See TRSER Tab 1. As in the previous action in *Havasu Landing Homeowners Association* v. *Babbitt*, petitioners challenged the propriety of the 1974 secretarial order. Pet. App. 8a-9a. The complaint sought "production of the entire administrative record regarding the Secretarial Orders of

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(C.D. Cal.). The district court ordered ejectment, and the Ninth Circuit affirmed. *United States* v. *Jorgensen*, No. 93-55296, 1997 WL 355849, at *1 (June 27, 1997) (116 F.3d 1487 (Table)). The *Jorgensen* defendants claimed, *inter alia*, that the Tribe had been forever divested of title to the shoreline area by the Secretary's 1941 designation. The court of appeals declined to address the issue of the extent of the Chemehuevi Reservation, pointing out that a tenant in an eviction action is estopped from challenging his landlord's title. *Id.* at *1. Contrary to petitioners' suggestion (Pet. 7), the court in *Jorgensen* in no way suggested that the shoreline area was not part of the Reservation; it did not reach that issue.

1974" and a declaration that the Parker Dam Act of 1940 and the payment of compensation for the lands acquired by that Act constituted a diminishment of the Reservation. Compl. paras. V.1., V.4. Petitioners also sought an injunction against the tribal court eviction action on grounds that the court allegedly did not have jurisdiction over them. *Id.* para. V.3.

On July 6, 2001, the district court granted defendants' motions to dismiss for lack of subject matter jurisdiction. The court first ruled, consistent with an earlier order denying a temporary restraining order, see Federal Appellees' Supp. C.A. E.R. (FASER) Tab 47, that petitioners had failed to exhaust tribal court remedies before proceeding to federal court. Pet. App. 11a-12a. The court next concluded that, even had petitioners not failed to exhaust tribal court remedies, their suit would be barred by sovereign immunity because it sought a declaration that the land at issue was not held in trust by the United States for the benefit of the Tribe. *Id.* at 12a-13a. Such an "attempt to divest the Tribe of their equitable title to the land," the court reasoned, falls within the QTA's Indian lands exception. *Id.* at 13a. The court concluded that the United States had, at the very least, a "colorable claim" that the land is part of the Reservation and that the Secretary was therefore entitled to invoke the Indian land exception to the QTA's waiver of immunity. *Id.* at 13a-14a.[2]

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[2] The district court also noted that petitioners' complaint presented "serious res judicata problems" because it raised issues that were the subject of the 1976 settlement and that were resolved on the merits against former permittees in *Havasu Landing Homeowners Ass'n* v. *Babbitt*, *supra*. Pet. App. 16a-17a n.2. The court did not need to resolve those issues, however, because it found that the suit was barred on other grounds.

5. The court of appeals affirmed in an unpublished memorandum. Pet. App. 1a-5a. That court, like the district court, concluded that petitioners' suit was barred in light of the QTA's Indian lands exception because the effect of their challenge, if it were successful, would be to divest the Tribe of equitable title to the shoreline lands. *Id.* at 2a-5a. The court of appeals did not reach or discuss the additional obstacles—namely, the res judicata effect of the 1976 settlement and the 1992 litigation and petitioners' failure to exhaust tribal remedies—that also barred petitioners' suit.

ARGUMENT

The court of appeals correctly concluded that the Quiet Title Act's Indian lands exception, 28 U.S.C. 2409a(a), bars petitioners from proceeding with this lawsuit. The court's unpublished decision does not conflict with any decision of this Court or of any other court of appeals. Further review is accordingly not warranted.

1. Petitioners' suit is the most recent of several actions by persons who occupied lands adjacent to Lake Havasu before 1974. Petitioners seek to litigate whether the United States holds legal title to the shoreline lands in trust for the Chemeheuvi Indian Tribe, notwithstanding the Secretary of the Interior's 1974 order confirming that the Tribe has equitable title to those lands. Petitioners assert here (Pet. 10), as they have in prior actions, that the Secretary lacked authority to issue that order and should accordingly be required to treat the area as public lands rather than reservation lands held in trust for the Tribe. Petitioners' claim is not actionable for a series of reasons.

First, petitioners are parties to the 1976 settlement agreement whereby they released all claims relating to

the 1974 secretarial order in return for the ability to renew their temporary use permits until 1990. That settlement, by itself, is sufficient, under principles of res judicata, to bar relitigation of the issues they resolved there and renew here. See Pet. App. 15a, 16a-17a n.2. See generally *Arizona* v. *California*, 530 U.S. 392, 413-416 (2000).

Second, petitioners raised their challenge to the Tribe's ownership of the shoreline area in an attempt to enjoin the enforcement of eviction orders entered in a tribal court proceeding in which petitioners failed to appear. As the district court explained, petitioners are barred from proceeding in the federal court by their failure to raise the question of the Tribe's jurisdiction over the shoreline in the tribal court. Pet. App. 11a-12a. This Court has stated that federal courts, in deference to "tribal self-government and self-determination," should refrain from considering challenges to a tribal court's exercise of jurisdiction over a case until the challenge has been considered by the tribal court itself. *Iowa Mut. Ins. Co.* v. *LaPlante*, 480 U.S. 9, 15 (1987); *National Farmers Union Ins. Co.* v. *Crow Tribe*, 471 U.S. 845 (1985).

Third, petitioners brought this suit against federal officials to challenge whether title to the shoreline area is held by the United States in trust for the Tribe. The United States has not waived its sovereign immunity to this claim. The court of appeals properly affirmed the district court's judgment dismissing the case on that ground.

Congress has provided the QTA as the exclusive means for adjudicating disputes with the United States over title to real property. See *Block* v. *North Dakota*, 461 U.S. 273, 284-286 (1983). The QTA expressly states that "[t]he United States may be named as a party

defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest." 28 U.S.C. 2409a(a). The QTA further provides, however, that "[t]his section does not apply to trust or restricted Indian lands." 28 U.S.C. 2409a(a). As this Court explained in *Mottaz* v. *United States*, 476 U.S. 843 (1986), "when the United States claims an interest in real property based on that property's status as trust or restricted Indian lands, the Quiet Title Act does not waive the Government's immunity." *Ibid.* The Court recognized in *Mottaz* that Congress enacted the QTA's Indian lands exception "to prevent abridgment of 'solemn obligations' and 'specific commitments' that the Federal Government had made to the Indians regarding Indian lands." *Id.* at 843 n.6. "A unilateral waiver of the Federal Government's immunity would subject those lands to suit without the Indians' consent." *Ibid.* (citing H.R. Rep. No. 1559, 92d Cong., 2d Sess. 13 (1972)).

This Court ruled in *Block* v. *North Dakota*, that a plaintiff cannot circumvent the QTA's limitations on the waiver of sovereign immunity by framing its suit as an action under some other federal law. 461 U.S. at 286. Consistent with that principle, this Court and lower courts have found that suits against the United States attacking the trust status of land are barred by reason of the QTA's Indian lands exception, even if the suits are styled as actions under the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, or other federal laws. See *Metropolitan Water Dist.* v. *United States*, 830 F.2d 139, 143 (9th Cir. 1987) (APA action challenging Interior Secretary's determination of reservation boundary barred by Indian lands exception to QTA), aff'd by equally divided court *sub nom. California* v. *United States*, 490 U.S. 520 (1989); *Department of*

Bus. Regulation v. *United States Dep't of the Interior*, 768 F.2d 1248 (11th Cir. 1985) (suit purporting to challenge Secretary's decision to take land into trust barred where effect of suit would be to divest Tribe of trust property), cert. denied, 475 U.S. 1011 (1986); *Alaska* v. *Babbitt*, 38 F.3d 1068, 1074 (9th Cir. 1994) (APA suit attacking trust status of land barred); *Spaeth* v. *United States Sec'y of the Interior*, 757 F.2d 937, 942 (8th Cir. 1985) (APA did not provide consent to suit against United States seeking to adjudicate disputed title to Indian real property in which United States claims interest).[3]

Petitioners argue for a different result based on the Tenth Circuit's decision in *Kansas* v. *United States*, 249 F.3d 1213 (2001), but their reliance on that case is misplaced. In *Kansas*, the State challenged a decision of the National Indian Gaming Commission that a tract of land in Kansas under lease to the Miami Tribe of Oklahoma constituted "Indian lands within such tribe's jurisdiction" for purposes of certain provisions of the Indian Gaming Regulatory Act (IGRA). *Id.* at 1218 (quoting from 25 U.S.C. 2710(b)). As the Tenth Circuit pointed out, "Indian lands" is defined in the IGRA as

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[3] If the United States does not "claim[ ] an interest in real property based on the property's status as trust or restricted Indian lands" then the Indian lands exception does not apply. *Mottaz*, 476 U.S. at 843 (exception not applicable where "the United States claims an interest in the Leech Lake lands, not on behalf of Indian beneficiaries of a trust, but rather on behalf of the United States Forest Service and the Chippewa National Forest"). In this case, however, the United States indisputably claimed an interest in the real property at issue based on the property's status as Indian trust land, as reflected in the 1974 Secretarial Order confirming the Chemehuevi Tribe's equitable title to those lands. Pet. App. 3a-4a.

"any lands title to which is * * * held by any Indian tribe or individual subject to restriction by the United States against alienation *and over which an Indian tribe exercises governmental power.*" 25 U.S.C. 2703(4)(emphasis added). The issue in *Kansas* was not the status of title, but instead whether the Tribe in that case exercised governmental power over off-reservation land. In finding that the QTA did not apply, the court of appeals emphasized that "[a] determination that a tract of land does or does not qualify as 'Indian lands' within the meaning of IGRA in no way affects title to the land." 249 F.3d at 1225. Instead, "[t]his is a dispute between federal, tribal, and state officials as to which sovereign has authority over the tract. The tract's owners are not even a party to this suit." *Ibid.* (citation omitted).

Here, in contrast, petitioners sued federal officials and the Tribe to obtain a ruling that the United States does not hold title to the lands at issue in trust for the Tribe. As the district court noted (Pet. App. 8a), the complaint clearly framed this case as a direct challenge to the Secretary of the Interior's 1974 determination to confirm equitable title to the shoreline area in the Tribe. This case, unlike *Kansas*, accordingly involves a dispute over title to real property in which the United States claims an interest. The United States plainly has a colorable claim that equitable title rests with the Tribe, based on the 1974 Secretarial Order. The Indian lands exception to the QTA applies and precludes petitioners' suit.[4]

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[4] This case bears no similarity to other cases petitioners cite, such as *South Dakota* v. *Bourland*, 508 U.S. 679 (1993), and *Montana* v. *United States*, 450 U.S. 544 (1981). In those cases, the Court examined the scope of tribal jurisdiction over lands within

2. Petitioners argue (Pet. 8-10) that the court of appeals erred by requiring only a "colorable" claim that the land at issue is "trust or restricted Indian lands" for purposes of the QTA's Indian lands exception. That argument is without merit. A requirement that the United States prove that the lands at issue are, in fact, trust or restricted Indian lands before the Indian lands exception could be invoked would defeat the purpose of that exception, which is intended to preserve the United States' immunity from suit. The courts have therefore required only a showing of a "colorable claim" that the lands in question are trust or restricted lands. *Wildman* v. *United States*, 827 F.2d 1306, 1309 (9th Cir. 1987); *Metropolitan Water Dist.* v. *United States*, 830 F.2d at 144; *Alaska* v. *Babbitt*, 75 F.3d 449, 451-452 (9th Cir. 1995), cert. denied, 519 U.S. 818 (1996); *Shivwits Band of Paiute Indians* v. *Utah*, 185 F. Supp. 2d 1245, 1251 (D. Utah 2002). Petitioners cite no decisions to the contrary.

3. Finally, petitioners argue (Pet. 10-12) that no waiver of sovereign immunity is needed for a court to determine the trust status of land. Petitioners cite several cases in which courts have determined whether a Tribe had jurisdiction over particular lands (Pet. 11-12), but none of the cases was a suit against the United States. The United States is not subject to suit in the absence of a waiver of sovereign immunity. In the case of suits contesting title, Congress has determined to provide only a limited waiver. Where, as here, the United States asserts a colorable claim that the land in question is part of reservation lands held in trust for an

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reservations that were not held in trust for the Tribes. Furthermore, because the United States was not a defendant in those suits, those cases presented no issue of sovereign immunity.

Indian Tribe, that waiver is not available. Petitioners' suit was therefore properly dismissed.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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